



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R01-OAR-2016-0168, FRL-9981-37-Region 1]**

#### **Air Plan Approval; Connecticut; Plan Submittals for the 2008 Ozone National**

#### **Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by Connecticut which relate to the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions are for the Greater Connecticut and the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate ozone nonattainment areas. EPA is proposing to approve submittals which include 2011 base year emissions inventories, an emissions statement certification, reasonable further progress (RFP) demonstrations, reasonably available control measures (RACM) analyses, motor vehicle emissions budgets, and contingency measures. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2016-0168. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not

publicly available, i.e., CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> and at the U.S. Environmental Protection Agency, EPA Region 1 Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1046; [mcconnell.robert@epa.gov](mailto:mcconnell.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **Table of Contents**

- I. Background
- II. Description of State's Submittals
- III. Evaluation of State's Submittals
  - A. Emissions statement certification
  - B. 2011 base year emissions inventory
  - C. Reasonable further progress plans

D. Motor vehicle emissions budgets / transportation conformity

E. Contingency measures

F. Reasonably available control measures (RACM) analysis

IV. Proposed Action

V. Statutory and Executive Order Reviews

## **I. Background**

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over three years) to provide increased protection of public health and the environment (73 FR 16436, March 27, 2008). The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Under the EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15.

Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air monitoring data (77 FR 30088, May 21, 2012). With that rulemaking, the Greater Connecticut area and the New York-N. New Jersey-Long Island NY-NJ-CT area were designated as marginal ozone nonattainment areas. The latter area is herein referred to as the NY-NJ-CT area. Areas that were designated as marginal nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. On May 14, 2016 (81 FR 26697), the EPA published its determination that the Greater Connecticut area and the NY-NJ-CT area

had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline and the areas were reclassified to moderate ozone nonattainment areas. *See* 40 CFR 81.306. Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than six years after the effective date of designations, or July 20, 2018. *See* 40 CFR 51.903.

## **II. Description of State's Submittals**

Clean Air Act (CAA) section 182 of subpart 2 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Moderate area designations trigger additional state requirements established under the provisions of the EPA's ozone implementation rule for the 2008 8-hour ozone NAAQS (40 CFR part 51, subpart AA). Examples of these requirements include submission of a modeling and attainment demonstration, a reasonable further progress (RFP) plan, controls on stationary sources that represent reasonably available control technology (RACT), and a demonstration that all reasonably available control measures (RACM) have been adopted. The EPA's May 4, 2016 (81 FR 26699) rulemaking established a January 2, 2017 moderate area SIP revision submission deadline.

On March 9, 2016, Connecticut submitted a 2011 emissions inventory of ozone precursors for all areas of the State. On September 5, 2017, Connecticut submitted an emissions statement certification which also covered all areas of the State. On January 17, 2017, Connecticut submitted SIP revisions for the 2008 ozone NAAQS for the Greater Connecticut moderate nonattainment area that included an RFP plan, contingency measures for the RFP plan, motor vehicle emissions budgets as defined by the RFP plan, and a RACM demonstration. Connecticut made a similar submittal on August 8, 2017, for the state's portion of the NY-NJ-CT moderate nonattainment area. Although Connecticut's January 17, 2017 and August 8, 2017 submittals

also included attainment demonstrations for the 2008 ozone standard, we are not addressing those submittals in this proposed rulemaking.

### **III. Evaluation of State's Submittals**

#### *A. Emissions statement certification*

EPA's implementation rule for the 2008 ozone NAAQS, herein referred to as the 2008 ozone rule, was published in the Federal Register on March 6, 2015. *See* 80 FR 12264. The 2008 ozone rule notes that many areas that were nonattainment for the 2008 ozone NAAQS had previously adopted an emissions statement reporting program due to being nonattainment for a prior ozone NAAQS. For these areas, the 2008 ozone rule indicates that the state should review its existing rule to see whether it still meets the requirements of section 182(a)(3)(B) of the CAA, and if the state determines that it does, the state may submit a SIP revision certification to that effect to meet this obligation for purposes of the 2008 ozone NAAQS.

On September 5, 2017, Connecticut submitted an emissions statement certification which covered all areas of the State. The submittal notes that Connecticut had previously adopted an emissions statement program pursuant to obligations it had under the one-hour ozone standard, and that EPA approved that program into the Connecticut SIP on January 10, 1995. *See* 60 FR 2524. Connecticut reviewed its current set of air pollution reporting requirements and confirmed that pursuant to its authority under the Regulations of Connecticut State Agencies (RCSA) 22a-174-33, 22a-174-4(d), and 22a-174-3a, all stationary sources of volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) that emit 25 tons or more a year of those pollutants are required to report their emissions, along with a certification as to the accuracy of the reported emissions, to the State. Emissions from smaller stationary sources that emit less than 25 tons per

year of VOC and/or NO<sub>x</sub> are inventoried as area sources within Connecticut's emissions inventory, which is described in section III.B of this proposal. Given the above, we propose to approve Connecticut's emissions statement certification for purposes of the 2008 ozone NAAQS.

*B. 2011 base year emissions inventory*

CAA section 172(c)(3) requires that each SIP include a "comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in [the] area...." By requiring an accounting of actual emissions from all sources of the relevant pollutants in the area, this section provides for the base year inventory to include all emissions that contribute to the formation of a particular NAAQS pollutant. Additionally, for the 2008 ozone NAAQS, EPA's March 6, 2015 ozone rule recommended 2011 as a baseline year from which emission reductions used to meet RFP requirements are creditable.

On March 9, 2016, Connecticut submitted to EPA as a SIP revision request an emissions inventory of ozone precursors for 2011. The inventory was submitted to meet the CAA section 182(a)(3)(A) obligation to develop a base year inventory, and was also used as the baseline year in the State's RFP plans which are described elsewhere in this proposal. The State conducted a public comment process on the inventory which concluded on August 31, 2015. The inventories include emission estimates in tons per summer day, and represent emissions estimates from stationary and mobile source categories during a typical summer day when ozone formation is highest. The ozone emissions inventory catalogs NO<sub>x</sub> and VOC emissions because these pollutants are precursors to ozone formation. Connecticut's 2011 emissions inventory contains emission estimates at the county level, and also contains emission estimates summed to the geographic areas that correspond to the State's two moderate ozone nonattainment areas.

Connecticut's 2011 emission inventory documents the procedures used to estimate emissions from individual stationary sources, referred to as point sources. The inventory describes the means by which the State identifies facilities that must report their air emissions to the State, and the techniques used to verify this information. These approaches include verification of information submitted by facilities by Connecticut Department of Energy and Environmental Protection (CT DEEP) enforcement staff during compliance inspections. Connecticut transmits its point source air emissions data to EPA's National Emissions Inventory (NEI) database each year in accordance with the requirements found within 40 CFR part 51, subpart A.

Area source emission estimates are made for small, stationary sources of air pollution that do not emit much individually, but do have significant emissions collectively. Examples include gasoline stations, automobile refinishing shops, and architectural and industrial maintenance coatings. Connecticut's area source emissions inventory identifies the source categories for which the State relied upon EPA's estimates, provides information on any adjustments made to EPA estimates, and notes which categories' emission estimates were prepared by the State. The inventory also explains how double counting between emissions from facilities inventoried as individual point sources were excluded from the area source emission estimates.

Connecticut used EPA's Motor Vehicle Emissions Simulator (MOVES) model to calculate emissions for on-road and most non-road mobile source sectors. The State provided the model with local activity inputs including vehicle miles traveled (VMT) and average speed data by county provided by the Connecticut Department of Transportation. Connecticut also provided inputs to the model which reflect that the State has more light-duty vehicles and heavy-duty

vehicles than national averages would suggest, and provided inputs for meteorology and fuels information.

We propose to find that the air emission estimates for these sources were adequately accounted for in Connecticut’s 2011 emissions inventory. The methodology used to calculate emissions for each source category followed relevant EPA guidance, most notably the July 2017 guidance entitled “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards and Regional Haze Regulations,” used appropriate, documented emission factors, or relied on emission estimates prepared for EPA’s National Emissions Inventory. Furthermore, the inventory submittal is sufficiently documented as to the techniques used to prepare the emission estimates.

Table 1 shows the emissions by source category, in tons per summer day (tpsd), from the 2011 base year emission inventory for each of the State’s two nonattainment areas.

*Table 1: Emissions Inventory Summary for Connecticut’s Nonattainment Areas (tons/summer day)*

<b>Source</b>	<b>CT portion of NY-NJ-CT area</b>		<b>Greater CT area</b>	
	<b>VOC</b>	<b>NO<sub>x</sub></b>	<b>VOC</b>	<b>NO<sub>x</sub></b>
Point	2.0	18.5	1.3	10.0
Area	52.7	6.9	48.5	6.2
Nonroad	41.8	32.5	37.0	36.1
Onroad	33.4	64.6	30.3	55.8
Biogenic	141.4	0.7	283.7	1.7
Totals	271.3	123.3	400.7	109.8

Additional details regarding Connecticut’s emissions inventory are included in Connecticut’s 2011 Periodic Emissions Inventory document, which is available in the docket for this proposed rulemaking. The inventories are based on the most current and accurate information available to the State at the time it was being developed. Additionally, the inventories comprehensively address all source categories in Connecticut’s nonattainment areas and were developed



consistent with the relevant EPA inventory guidance. For these reasons, we are proposing to approve the 2011 baseline emissions inventories into the Connecticut SIP as meeting the requirements of CAA section 172(c)(3).

*C. Reasonable further progress plans*

Section 182(b)(1) of the CAA and the EPA's 2008 Ozone Implementation Rule requires that State's submit a reasonable further progress (RFP) demonstration for each 8-hour ozone nonattainment area designated moderate and above, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO<sub>x</sub> from a baseline emissions inventory. Section 182(b)(1) of the CAA requires RFP to demonstrate a 15% reduction in VOC emissions before the more general RFP requirements of section 172(c)(2) of the CAA apply, which permits a combination of VOC and NO<sub>x</sub> emission reductions to show RFP. Connecticut has previously submitted 15% VOC-only RFP SIPs under section 182(b)(1), due to nonattainment obligations it had under the one-hour ozone standard. Therefore, for purposes of the 2008 ozone standard, Connecticut submitted RFP demonstrations for its two moderate nonattainment areas showing VOC and NO<sub>x</sub> emission reductions greater than 15% within six years after the 2011 base year inventory (between 2012-2017). Note that we are only proposing action on the RFP plan for Connecticut portion of the NY-NJ-CT area.

Connecticut chose to demonstrate that RFP was achieved between the 2011 baseline year and the 2017 target year by showing that NO<sub>x</sub> emissions would decline by at least 10%, and VOC emissions by at least 5%, within each of its nonattainment areas. Connecticut updated its 2011 emission estimates for use within the RFP baseline inventory by using the most recently available version of EPA's MOVES model, MOVES 2014a, for the calculation of on-road and

non-road mobile source emissions. Additionally, Connecticut accounted for emissions available for use as emissions offsets held within its emissions offset bank within the RFP analysis.

Connecticut relied primarily on the emissions projection work it had developed and submitted to the Mid-Atlantic Regional Air Management Association (MARMA) for their effort to develop a 2017 modeling platform. The projection of emissions from electrical generating units (EGUs) was accomplished using a forecasting tool developed by the Eastern Regional Technical Advisory Group (ERTAC). We reviewed these projections during the public comment period that Connecticut held for its RFP plans and found that the ERTAC EGU emissions forecasts produced reasonable results for facilities in the State.

Table 2 below contains a summary of the 2011 RFP baseline inventory, 2017 target levels incorporating the 5% VOC and 10% NO<sub>x</sub> emission reductions, and 2017 projected, controlled emissions for the Greater Connecticut and the Connecticut portion of the NY-NJ-CT nonattainment areas. Connecticut's RFP analysis for its two moderate nonattainment areas shows that projected, controlled VOC and NO<sub>x</sub> emissions in 2017 will be well below the emission target levels, thereby demonstrating that RFP has been met.

*Table 2: Summary of RFP calculations for CT's two nonattainment areas*

<b>Description</b>	<b>VOC Emissions (tons/summer day)</b>	<b>NO<sub>x</sub> Emissions (tons/summer day)</b>
<b><i>RFP Baseline inventory</i></b>		
Gr. CT area	106.1	91.9
CT portion of NY-NJ-CT area	115.6	115.1
<b><i>2017 target level of emissions</i></b>		
Gr. CT area	100.8	82.7
CT portion of NY-NJ-CT area	109.8	103.6
<b><i>2017 projected, controlled emissions</i></b>		
Gr. CT area	84.6	56.4
CT portion of NY-NJ-CT area	92.3	71.3

RFP plans must include a motor vehicle emissions budget (MVEB), which provides the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP. The State's RFP plans included MVEBs for both nonattainment areas for the year 2017. The MVEBs are discussed in detail in Section III.D of this document.

*D. Motor vehicle emissions budgets / transportation conformity*

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the NAAQS, and that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS (CAA 176(c)(1)(A) and (B)). The EPA's conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule requires a demonstration that emissions from the Metropolitan Planning Organization's (MPO) Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicle emission budget (MVEB) contained in the control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). The MVEBs are defined in 40 CFR 93.101 as the level of mobile source emissions of a pollutant, of the total allowable emissions, defined in the SIP for a certain date, for the purpose of demonstrating attainment or maintenance of the NAAQS or for meeting reasonable further progress milestones.<sup>1</sup>

---

<sup>1</sup> Further information concerning EPA's interpretations regarding MVEBs can be found in the preamble to EPA's November 24, 1993, transportation conformity rule. *See* 58 FR 62193 – 62196.

The RFP plans submitted by Connecticut are control strategy SIPs, and they contain 2017 motor vehicle budgets for VOCs and NO<sub>x</sub> by nonattainment area. Table 3 contains these VOC and NO<sub>x</sub> transportation conformity budgets in units of tons per summer day.

*Table 3. Conformity budgets in the Connecticut RFP plans*

Area name	2017 Transportation Conformity Budgets (tons/day)	
	VOC	NO <sub>x</sub>
Greater Connecticut	15.9	22.2
CT portion of NY-NJ-CT area	17.6	24.6

EPA issued a letter on March 20, 2017 to Connecticut in which we stated that the budgets for the Greater Connecticut area were adequate for use in transportation conformity determinations. Additionally, EPA published an announcement of this adequacy finding in the Federal Register on May 31, 2017. *See* 82 FR 24859. We did not make an adequacy finding for the Connecticut portion of the NY-NJ-CT area; however, this action serves to notify the public that EPA is reviewing for adequacy the MVEBs, contained in the RFP plan for the Connecticut portion of the NY-NJ-CT area, simultaneously with our proposed approval of the RFP plan as required by 40 CFR part 93.118(f)(2). In this action, we are proposing approval of the 2008 conformity budgets for VOC and NO<sub>x</sub> for the areas shown in Table 3 above.

#### *E. Contingency measures*

Pursuant to section 172(c)(9) of the CAA, nonattainment plan provisions must provide for the implementation of contingency measures. These are specific measures to be undertaken if a nonattainment area fails to make RFP, or to attain the national primary ambient air quality standard by the applicable attainment date. Such contingency measures shall take effect without further action by the state or the EPA. While the CAA does not specify the type of measures or

quantity of emissions reductions required, the EPA has interpreted the CAA to mean that implementation of these contingency measures would provide additional emissions reductions of up to 3% (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. Contingency measures could include federal measures and local measures already scheduled for implementation, as long as their emission reductions are beyond those needed for attainment or to meet RFP. The CAA does not preclude a state from implementing such measures before they are triggered by a failure to meet RFP. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the 2008 ozone rule (80 FR 12264, 12285).

Connecticut provided NO<sub>x</sub> emissions reductions in excess of those needed for RFP as contingency measures. Table 2 above illustrates the magnitude of the excess emission reductions achieved by Connecticut's RFP plans. For example, within the Greater Connecticut nonattainment area, the projected, controlled NO<sub>x</sub> emissions in 2017 of 56.4 tons/day are 32% below the area's NO<sub>x</sub> target of 82.7 tons/day. Given that Connecticut established the 2017 NO<sub>x</sub> emissions target by factoring in a 10% reduction in emissions, the additional 32% reduction in NO<sub>x</sub> emissions is more than adequate to cover the 3% reduction in emissions needed to satisfy the area's contingency measure obligation. Similarly, for the Connecticut portion of the NY-NJ-CT area, the projected, controlled NO<sub>x</sub> emissions in 2017 of 71.3 tons/day are 31% below the area's NO<sub>x</sub> target of 103.6 tons/day, thereby providing a sufficient surplus to cover that area's contingency measure obligation. Connecticut's contingency measure analysis notes that the State chose to use NO<sub>x</sub> emission reductions from federal non-road engine standards occurring between 2012 and 2017, which form a part of the large overall NO<sub>x</sub> emission reduction surplus,

as contingency measures. Emission reductions realized as newer, lower emitting equipment replace older, higher emitting equipment carry forward into the future and will continue to reduce emissions after 2017.

The purpose of the contingency measures is to provide for further emission reductions to make up the shortfall needed for RFP or for attainment, during the period in which the State and the EPA determine whether the nonattainment plan for the area needs further revision to achieve the NAAQS expeditiously.<sup>2</sup> The appropriateness of relying on already-implemented reductions to meet the contingency measures requirement has been addressed in two federal circuit court decisions. *See Louisiana Environmental Action Network (LEAN) v. EPA*, 382 F.3d 575, 586 (5th Cir. 2004), *Bahr v. United States EPA*, 836 F.3d 1218 (9<sup>th</sup> Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (January 8, 2018). The EPA believes that the language of section 172(c)(9) and 182(c)(9) is ambiguous with respect to this issue, and that it is reasonable for the agency to interpret the statutory language to allow approval of already implemented measures as contingency measures, so long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to make RFP or for attainment in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under the EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called early-triggered contingency measures) as a valid means to meet the Act's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early-triggered contingency measures and the Ninth

---

<sup>2</sup> See General Preamble, section III.A.3.c (57 FR 13498 at 13511).

Circuit rejecting that interpretation. The Second Circuit in which Connecticut is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the federal circuits on this issue, the EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of section 172(c)(9) allowing early-triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP provisions authorize the Agency to follow this interpretation of section 172(c)(9) in Circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early-triggered contingency measures appropriately satisfy all other relevant CAA requirements, the EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown in Table 2 above, the emissions reductions projected through 2017 are sufficient to meet the requirements for contingency measures, consistent with the EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of Connecticut's RFP contingency measures.

#### *F. Reasonably available control measures (RACM) analysis*

Connecticut submitted a demonstration that its two moderate nonattainment areas have adopted all RACM necessary to demonstrate attainment as expeditiously as practicable as required by CAA section 172(c)(1) and 40 CFR 51.912(d). The EPA interprets the CAA RACM provision to require a demonstration that: (1) the state has adopted all reasonable measures

(including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as possible, and (2) no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area. States should consider all available measures, including those being implemented in other areas, but must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date or are necessary for RFP.

The EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). *See* the “General Preamble for Implementation of Title I of the CAA of 1990” (General Preamble), 57 FR 13498, 13560 (April 16, 1992). In that preamble, the EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. The EPA also indicated in the General Preamble that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, the General Preamble indicates that states should provide in the SIP submittals a discussion of whether the measures considered are reasonably available or not. If the measures are reasonably available, they must be adopted as RACM. Finally, the EPA indicated that states could reject potential RACM either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts. States could also consider local conditions, such as economics or implementation concerns, in rejecting potential RACM. On November 30, 1999, John S. Seitz, Director, Office of Air Quality Planning and Standards, issued a memorandum on this topic, “Guidance on the Reasonably Available Control Measures



(RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas” which reiterated the CAA RACM requirements and elaborated on the General Preamble.

To demonstrate that the area meets the RACM requirement, Connecticut described its current regulatory structure limiting ozone precursor emissions, which stems back to the 1980s, and evaluated the likelihood of additional measures being adopted that would advance the date of attainment for the 2008 ozone standard. Connecticut notes that stationary and mobile sources of VOC and NO<sub>x</sub> are well-controlled in the State as a result of numerous state and federal measures that have or will soon be implemented to reduce in-state emissions of ozone precursors. Connecticut’s submittal mentions that, with regard to major stationary sources, reasonable available control technology (RACT) is considered a subset of RACM. Stationary sources of VOC and NO<sub>x</sub> have been subject to RACT requirements for several decades in light of the State’s nonattainment status for earlier ozone standards, and we recently approved Connecticut’s RACT certification for the 2008 ozone NAAQS along with several regulatory updates that strengthened requirements for sources of NO<sub>x</sub>. *See* 82 FR 35454; July 31, 2017. Connecticut concludes that its state regulations adopted to meet RACT, except for the most recent updates to NO<sub>x</sub> requirements approved in our July 31, 2017 approval which have an effective date that does not occur in time to advance the attainment date for the 2008 ozone NAAQS, represent RACM for major sources.

Regarding other stationary sources of ozone precursor emissions, Connecticut notes that its participation in the Ozone Transport Commission (OTC) has, among other things, resulted in the state’s adoption of a number of regulations limiting emissions from stationary, non-major sources of ozone precursor emissions. In particular, Connecticut notes that as part of its

attainment planning process to meet the 1997 ozone standard, the state adopted regulations recommended by the OTC that included regulations limiting emissions from consumer and commercial products, architectural and industrial maintenance coatings, asphalt paving operations, pressure-vacuum vent valves at gasoline stations, and limits on VOC emissions used by solvent cleaning operations. Connecticut adopted these regulations jointly with other OTC states as a means of implementing effective controls at the regional level, but acknowledged that none of these measures, implemented by Connecticut alone, would be sufficient to advance attainment by one year or more. Connecticut considers its analysis of RACM for the 1997 ozone NAAQS to largely suffice for the 2008 ozone NAAQS, but did perform an additional review to explore whether RACM for non-major stationary sources exist. This review found that ancillary NO<sub>x</sub> emission reductions that are being achieved by a regional haze measure, a reduction of the level of sulfur allowed in distillate and residual fuel oil, qualify as a RACM measure. Connecticut will implement this regulation in two phases, with Phase 1 having become effective on July 1, 2014. The Phase 2 portion of the regulation does not become effective until July 1, 2018, and therefore is not considered RACM.

Regarding mobile source emission reductions, Connecticut evaluated the impact of a number of mobile source initiatives, including transportation control measures, to evaluate their effectiveness at reducing ozone precursor emissions. Specifically, Connecticut's RACM analysis included a summary of the emission reductions achieved by the Federal Highway Administration's Congestion Mitigation and Air Quality (CMAQ) program, as funds from this program are used, in part, to improve traffic congestion, which in turn reduces emissions from on-road vehicles. For example, Table 6.2 of Connecticut's attainment demonstration submittal

for the Greater Connecticut area shows the anticipated VOC and NO<sub>x</sub> emission reductions from specific transportation projects. The measures in Table 6.2 are expected to reduce ozone precursor emissions in Connecticut by less than 1%, and are therefore not considered to be RACM because they are not large enough to advance the attainment date by at least one year. Other mobile source measures, such as the Lawn Equipment Exchange Fund, reductions from the Diesel Emissions Reduction Act funding, Smartway, and EVConnecticut, were all found to provide meaningful reductions, but none were determined to advance the attainment date and therefore are not considered to be RACM.

The RACM analysis presented by CT DEEP did not identify any new measures that would have substantially advanced the area's achievement of the 2008 ozone NAAQS, and the State notes that atmospheric transport from upwind areas on most high ozone days overwhelms the ability of CT DEEP to significantly advance Connecticut's attainment date solely with in-state control strategies. In addition, Connecticut notes that EPA's recently finalized bump-up process provided little time to adopt and implement additional RACM candidate measures prior to the 2016 ozone season, which would need to occur to advance the attainment date by one year.

Connecticut evaluated all source categories that could contribute meaningful emission reductions and identified and evaluated an extensive list of potential control measures. The State considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures to determine their reasonableness and availability. We agree that Connecticut has adopted all RACM for its two moderate nonattainment areas. Therefore, we are proposing to approve Connecticut's RACM SIPs prepared for the State's two moderate nonattainment areas.

#### **IV. Proposed Action**

We are proposing to approve SIP submittals from the State of Connecticut for the 2008 ozone NAAQS for the Greater Connecticut moderate nonattainment area, and for the Connecticut portion of the New York-N. New Jersey-Long Island NY-NJ-CT moderate nonattainment area. Specifically, we are proposing to approve the following:

- An emission statement certification;
- 2011 base year emission inventories;
- RFP demonstrations;
- Motor vehicle emissions budgets;
- Contingency measures; and
- Demonstration of RACM implementation.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2018.

Alexandra Dunn,  
Regional Administrator,  
EPA Region 1.

[FR Doc. 2018-16622 Filed: 8/2/2018 8:45 am; Publication Date: 8/3/2018]